



CBS

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HOWARD F. JAECKEL

VICE PRESIDENT AND ASSOCIATE GENERAL COUNSEL

FILED ELECTRONICALLY AND BY U.S. MAIL

Federal Communications Commission
ATTN: Nazifa Sawez
Room 2-A726
445 12th Street, S.W.
Washington, D.C. 20554

**Re: TELEVISION STATION SECTION 339(a)(2)(D)(vii) WAIVER
REQUEST (MB Docket No. 05-317)**

Dear Ms. Sawez:

November 22, 2005

CBS Television Stations Inc. ("CBS"), licensee of KCNC-DT, Denver, Colorado, hereby respectfully requests a waiver of 47 USC § 339(a)(2)(D) to prohibit satellite subscribers from receiving or conducting a digital signal strength tests in order to qualify for satellite retransmission of a distant digital signal of a station affiliated with the CBS Television Network. Such a waiver is warranted pursuant to Section 339(a)(2)(D)(viii) (II), since KCNC's digital signal coverage is limited due to "the unremediable presence of zoning and legal impediments."

The Commission is well aware of the history of the zoning litigation that has blocked the construction of a multi-user tower on Lookout Mountain to accommodate the digital facilities of KCNC-DT and three other Denver television stations. Accordingly, that history will be only briefly summarized below.

In 1999, the Board of County Commissioners of Jefferson County (the "Board") denied the request of Lake Cedar Group, LLC ("LCG"), a consortium of the above Denver television stations, for the zoning authority needed to construct the proposed multi-user tower as originally designed (the "Original Tower"). While an appeal of that decision was pending, and as a result of discussions with Jefferson County, LCG filed a new application to rezone the Lookout Mountain property in July 2002. That application called for a tower that would be 120 feet shorter, and would have a visual profile 260 feet lower than, the Original Tower. On August 19, 2003, the Board granted the rezoning of the Lookout Mountain site.

On September 17, 2003, the City of Golden, various homeowners' groups and other parties (the "plaintiffs") filed a complaint with the Jefferson County District Court seeking review of the Board's rezoning determination, along with a claim for preliminary and permanent injunction and declaratory relief (Case No. 03 CV 3045). On March 26, 2004, Judge R. Brooke Jackson entered a preliminary stay order enjoining the County from allowing LCG to begin construction of its proposed multi-user telecommunications tower pending further hearings before the Board.

Following such hearings, on August 31, 2004, the Board found that "the applied for rezoning is in its (sic) best interest of the health, safety, morals, convenience, order, prosperity and welfare of the residents of Jefferson County" and unanimously voted to adopt the resolution approving the rezoning of the Lookout Mountain site to accommodate the LCG tower.

On September 3, 2004, LCG filed with the court a request for confirmation that the Board's further hearing and decision complied with the court's order of March 26, 2004, and that the stay order was accordingly lifted by its own terms. On September 7, 2004, the Board joined in the LCG's request, stating that it "believes it has fully complied with the Court's 'stay order,' and agrees [with LCG] that the stay order should be vacated." By handwritten order of September 13, 2004, Judge Jackson ruled that "the parties may re-brief the issue and/or set another hearing," but declined to lift the stay order without further proceedings.

On May 4, 2005, the court found that the requirements of its previous remand had been met. However, in response to a new argument raised by plaintiffs, the court held that it could not determine, based on the existing record, that the Board had received "competent evidence" that the set back between towers on the site was sufficient to prevent multiple tower failures from affecting occupied dwellings, as required by applicable zoning resolutions. The court accordingly again remanded the case to the Board for further proceedings, and continued the stay in effect. A copy of the court's decision is attached hereto as Exhibit A.

After further hearings, on September 27, 2005, the Board denied the applied-for rezoning by a 2-1 vote. A transcript of the relevant portion of the hearing before the Board is attached as Exhibit B.

At approximately the same time, the City of Golden, one of the plaintiffs in the above litigation, initiated condemnation proceedings regarding the property on which the new tower is to be constructed, claiming that the property is required for "open space and parkland."

On September 28, 2005, the plaintiffs filed with the court a Motion to Vacate the Board's August 19, 2003 decision to grant rezoning of the Lookout Mountain site.

On October 27, 2005, LCG filed an action challenging the Board's action in Jefferson County District Court. Concurrently, LCG and plaintiffs filed a Stipulated Motion requesting the court to consolidate LCG's action with its consideration of the plaintiffs' Motion to Vacate, and to adopt procedures for the final resolution of all pending issues. A copy of the Stipulated Motion is attached as Exhibit C.

Based on the foregoing, there can be no doubt that KCNC's digital signal coverage has been limited "due to . . . unremediable . . . zoning and legal impediments." In this context, it is relevant to note that, since December 2001, KCNC-DT has been operating at low power pursuant to special temporary authority (STA), with a signal meeting the interim field strength requirements set forth by the Commission in its *Memorandum Opinion and Order on Reconsideration*, MM Docket No. 00-39, 16 FCC Rcd 20594 (2001). The station will continue to provide digital service in this manner until the Lookout Mountain litigation has been resolved.

Based on the above, CBS respectfully requests the Commission to grant the foregoing request for waiver.

Sincerely,

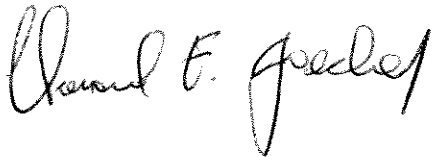
A handwritten signature in cursive script, appearing to read "Donald E. Fiedler".

EXHIBIT A



May 4 2005
11:03AM

**DISTRICT COURT,
JEFFERSON COUNTY, COLORADO**

1st Judicial District Court
Jefferson County Court & Administrative
Facility
100 Jefferson County Parkway
Golden, CO 80401-6002

**Plaintiff(s): CITY OF GOLDEN; CANYON AREA
RESIDENTS FOR THE ENVIRONMENT, INC.;
PARADISE HILLS HOMEOWNER
ASSOCIATION; STONEBRIDGE AT EAGLE
RIDGE MASTER OWNER'S ASSOCIATION;
PACIFIC MILLIMETER PRODUCTS, INC.;
MONNIE ELIZABETH AND M. ROBERT D.
BARRETT; EDDIE and CHERYL ALIANIELLO;
JAMES and CHRISTINA SHEA; GUENTER
GROTHE; DR. RON LARSON; BRENT AND
ELLIE ANDERSON; HAL and MARY SHELTON;
ROGER and EVA COLTON; JEAN and PAUL
QUENEAU; ROGER MATTSON; KATHLEEN A.
SANDER and GARY OLHOEFT; MARTSON and
THERESA SHELTON**

**Defendant(s): JEFFERSON COUNTY, BOARD OF
COUNTY COMMISSIONERS OF JEFFERSON
COUNTY; and LAKE CEDAR GROUP, L.L.C.**

▲ COURT USE ONLY ▲

Case No. 03 CV 3045

Division 6, Courtroom 5-B

ORDER

This case has been the subject of extensive motions practice and several court orders. In brief review, the plaintiffs are the City of Golden and various homeowners' associations and individuals who oppose the erection of a new 730-foot telecommunications tower on Lookout Mountain in Jefferson County, Colorado. They contend, among other things, that the tower will expose them to excessive radiation, will interfere with electronic equipment, and will decrease their property values. They believe that there are alternate sites on Squaw Mountain or Mt. Morrison that would accommodate the tower and create fewer adverse impacts.

Defendants are the Board of County Commissioners of Jefferson County ("the Board") and the Lake Cedar Group, L.L.C. Lake Cedar is a consortium of five local television stations. The Federal Communications Commission has ordered all television stations in the United States to convert from analogue to digital signals. The majority of Lake Cedar's members presently use four towers on property owned by Lake Cedar on Lookout Mountain to transmit analogue signals. Lake Cedar wishes to replace those existing towers with the new tower in order to comply with the directive to convert to digital signals.

Despite the presence of the four existing towers, the property in question historically was not zoned for telecommunication towers. The existing towers are "non-conforming uses." Lake

Cedar therefore applied to the County in June 2002 for approval of a zoning change that would accommodate the replacement tower. The plaintiffs recognize that the four existing towers, which they believe have already adversely affected the health and property of citizens in the vicinity, will be rendered obsolete by the FCC's requirements. Their goal is to block the erection of the new tower and to reduce or altogether eliminate the impacts of communication towers on them when the existing towers are taken out of service.

The Jefferson County Planning Commission held hearings on four dates in the spring of 2003. The county planner in charge of the site has opposed Lake Cedar's application on grounds that Lake Cedar has not demonstrated that alternative sites are unavailable. Nevertheless, following public hearings on July 1, 8 and 22, 2003, the Board unanimously approved Lake Cedar's application for the zoning change on August 19, 2003. Resolution No. CC-03-410. R. 1075.

Plaintiffs filed their complaint in this case September 17, 2003, seeking to prevent construction of the tower. On December 12, 2003 this Court denied defendants' motion to dismiss the claim for injunctive relief and their motion to dismiss the claims of the City of Golden. However, the Court dismissed plaintiffs' claim for declaratory relief, concluding that the appropriate procedure was that set forth in Rule 106(a)(4) of the Colorado Rules of Civil Procedure.

Rule 106(4) provides courts with limited jurisdiction to review decisions of governmental bodies such as the Board. Courts do not re-examine the merits of a decision. Rather, they may only consider whether the governmental body exceeded its jurisdiction or abused its discretion. With specific reference to judicial review of a rezoning decision, assuming that the Board correctly interprets and applies the applicable zoning laws, the decision must be upheld unless there is no competent evidence in the record to support it. *See, e.g., Corper v. City and County of Denver*, 552 P.2d 13, 15 (Colo. 1976). *See also Regents of University of Colorado v. Denver*, 929 P.2d 58, 61 (Colo. App. 1996).

In January 2004 plaintiffs filed a motion seeking a preliminary injunction prohibiting the issuance of any construction permits. In order to obtain a preliminary injunction, plaintiffs were required to show that (1) they have a reasonable probability of success on the merits, (2) they are in danger of sustaining an irreparable injury, (3) they do not have an adequate remedy at law, (4) an injunction would not disserve the public interest, (5) the balance of the equities favors an injunction, and (6) an injunction would preserve the status quo pending a trial on the merits. *Rathke v. MacFarlane*, 648 P.2d 648, 653 (Colo. 1982).

With respect to the first element, probability of success on the merits, plaintiffs made three arguments as to how the Board had abused its discretion. First, they argued that Lake Cedar had not demonstrated that no alternative site was available, contrary to Jefferson County Zoning Resolution §15.F.2.b.(1)(later renumbered 17.F.2.b.(1)). Second, they argued that the Board had received materials that were filed fewer than 21 days before the public hearings, in violation of Zoning Resolution §1.G.3.1. Finally, they argued that application violated the "set back" standard of Zoning Resolution §15.F.2.b.(2), because the Board had failed to consider evidence of damage that could be inflicted upon occupied dwellings by guy wires in the event of

tower failure. Plaintiffs' Motion to Stay the Effect of the Zoning Resolution and for Preliminary Injunction at 3-4.

The Court conducted a hearing on March 26, 2004. The Court found that plaintiffs had established probability of success on the merits in two respects: the Board improperly received late-filed materials, Reporter's Transcript of March 26, 2004 ruling at 5-12 (R.15014-15021); and there was no competent evidence in the record rebutting plaintiffs' evidence on the guy wire issue, *id.* at 12-13 (R. 15021-22). The Court found that the other five elements of a preliminary injunction had also been established. *Id.* at 13-17 (R. 15022-26).

The Court entered the following order:

In this case , the Court issues a specific stay order that enjoins the County from granting permission to the applicant to begin construction pending, A, permitting the plaintiffs to respond in a meaningful way to the materials in Tab 2 of the compilation of the record submitted by the plaintiffs, that is to have a hearing before the Board of Commissioners and an opportunity to respond to those new materials; and B, receiving and considering competent evidence regarding the guy wire failure issue and the potential impact of guy wire failure on the occupied dwellings in the area.

Reporter's Transcript at 17 (R. 15026). The Court remanded the case to the Board to take further evidence and make further findings on those issues. *Ibid.*

The Board conducted further hearings on August 12 and 17, 2004. On August 31, 2004 the Board again unanimously approved the rezoning application. In its Resolution No. CC04-451 issued on that date the Board stated that it had received additional evidence on the issues identified in the Court's order. R. 13151. It found that subject to certain conditions, Lake Cedar's proposal meets the requirements of section 17.F.2. of the Jefferson County Zoning Resolution. R. 13152.

Lake Cedar then moved to lift the stay. It argued that because the Board had given the plaintiffs an opportunity to respond to the "late-filed materials" and had received additional evidence that guy wire failure would not impact occupied dwelling, the Court's stay should either be dissolved by its own terms or should be lifted because plaintiffs could no longer demonstrate a likelihood of success on the merits. The Board filed a statement of its position in agreement with Lake Cedar. Plaintiffs filed a response opposing the lifting of the stay. On October 25, 2004 the Court denied the motion to lift the stay "at this time," pending the preparation and filing of the certified record of the proceedings subsequent to the March 26, 2004 hearing.

The record has now been certified. The issues concerning whether the Court should issue a permanent injunction prohibiting the Board from allowing construction of the tower have been fully briefed by the parties. Counsel for the City of Golden set a permanent injunction hearing for July 22, 2005. However, in a Rule 106(a)(4) proceeding new evidence cannot be submitted. Because the Court has the record, and the parties' respective legal arguments have been briefed,

the Court finds that another hearing would not be of material assistance to the Court in resolving the issues presented. Accordingly, the Court vacates the scheduled July 22, 2005 hearing.

I first note that both parties devote a portion of their briefs to “background” that they have brought to the Court’s attention on other occasions in this case. Plaintiffs reiterate their belief that the new tower will create health risks, interfere with the operation of electronic equipment, and depress property values. They remind the Court that county planners recommended against approval of the Lookout Mountain site on the ground that alternative sites had not been sufficiently explored. Plaintiffs have done a thorough and competent job of marshaling evidence that supports their position on these important issues. However, this Court is not the forum for those issues to be resolved. The elected county commissioners have that authority.

Similarly, the tower proponents’ reminder that the federal government has mandated that television broadcasting stations convert from analogue to digital signals is off the mark of what is before the Court for decision.

The Court finds that the Board has complied with the Court’s remand order. The plaintiffs were provided an opportunity to respond to the late-filed materials, and they do not contend otherwise. Proponents of the tower submitted expert testimony indicating that in the event of tower failure, guy wires would not impact occupied dwellings. Malouf report, R. 13013-25; Jones report, R. 15729-30; Malouf testimony, R.15941-49. Plaintiffs disagree with the guy wire experts. However, the Board considered competent evidence on both sides and once again unanimously voted in favor of the zoning change that would permit the construction of the tower.

Plaintiffs now focus on an argument that was not part of their preliminary injunction case. The guy wire failure argument presented by the plaintiffs in support of a preliminary injunction was based upon the following part of §15.F.2.b.(2) of the zoning resolution: “All new structures must be set back from the property line sufficient to prevent all ice-fall materials and debris from tower failure or collapse from falling onto occupied dwellings other than those occupied by the tower owner” The argument that they emphasize in their present briefs is based upon another sentence in the same regulation that provides: “Where more than one tower is located on a site, the set back between such towers shall be sufficient to prevent multiple failures in the event one tower fails.”

Plaintiffs envision three scenarios in which they say the “multiple tower failure” problem could occur: (1) the new 730-foot tower could fall onto the existing Channel 4 tower that is 683 feet away; (2) the new tower or its guy wires could sever the guy wires of the Channel 4 tower, which might fall on an occupied home that is within 200 feet of the base of that tower; (3) Channel 4 tower could fail and sever the guy wires supporting the new tower. However, to the extent that these scenarios do not threaten harm to any person or to any property other than the towers themselves, as appears to be the case with number 3 and possibly number 1, they do not support the plaintiffs’ position. The towers are the property of the television stations or their Lake Cedar consortium. It is explicit in the first sentence of §15.F.2.b.(2), and at least implicit in the remainder, that the purpose of the regulation is the protection of the public and the protection

of property other than the property of the tower owners. Plaintiffs are not in a position to assert potential damage to the tower owners as a basis to resist the construction of the new tower.

Plaintiffs' argument is perhaps best stated in their description of scenario number 2:

As is evident from the Lake Cedar site plan, the guy wires supporting the Channel 4 tower are even closer to the base of the HDTV Tower mast: a distance of only 220 feet. R. 13178. (Set Back drawing); R. 15208 (Barrett Presentation) & R. 15287 (Setback Drawing). Lake Cedar's own witnesses have acknowledged in written and oral testimony that the Channel 4 tower guy wires are within the radius of debris fall and failure of the HDTV Tower. R. 13392 (Malouf Report) & R. 15945 (Malouf testimony)(testimony that conservatively estimated tower fall debris radius is 80% of tower height, which, in this case, is 584 feet). *Failure of the HDTV Tower or its guy wires during construction could sever the east guy wires on the Channel 4 tower, which would likely cause the 843 foot Channel 4 tower to fall to the west, where the nearest occupied home is only 200 feet from the base of that tower* (well within the 80 percent of tower height that Lake Cedar's witnesses admit constitutes the "fall zone"). R. 13178. (emphasis added).

The key conclusion is that failure of the new tower could sever the east guy wires of the Channel 4 tower, which in turn would "likely" cause the Channel 4 tower to fall to the west, which in turn might impact an occupied home. The citations to the record are to maps and the Malouf report and testimony. However, there is no express support in these portions of the record for plaintiffs' conclusion. Plaintiffs apparently infer that the Channel 4 guy wires could be severed, and if so, that the Channel 4 tower would likely fall into the area where there is an occupied home. However, the inference is neither an obvious nor a necessary one from the evidence cited.

In response Lake Cedar first argues that the "multiple tower" sentence in the zoning resolution does not even apply to this case because multiple towers will not be "located" on the site. This is because the old towers will only be present temporarily until the new tower is constructed and placed in service. This "interpretation" of the language of the resolution is unpersuasive. Of course the old towers and the new towers will be located together on the site until the old towers are removed! If plaintiffs' worst case scenario were to occur, and the Channel 4 tower fell on an occupied home, would Lake Cedar be mollifying the occupants by reminding them that the Channel 4 tower wasn't really "located" there at all?

Lake Cedar adds a similarly unpersuasive argument based upon its construction of the word "sufficient" in the zoning resolution. The phrase "sufficient to prevent multiple failures" doesn't mean what it says, according to Lake Cedar. Rather, it should be read to allow discretion and to mean "reasonably" effective to prevent multiple failures. This Court will not give a strained interpretation to common and ordinary terms.

What the Court is interested in is the evidence that was presented to the Board on the multiple failure issue. The defendants' expert, Malouf, addressed it in his testimony as follows:

The other point is the impact of the existing tower. I have discussed the implementation plan with the director of installation at Radient that's the tower contractor that would be designing and fabricating and installing the tower. The proposed location that we have now is the most optimized location that would minimize the impact and the interference of the existing tower. There's no wiring delays. The distance and the layout between the existing tower and the new tower does not provide for any unusual situation or concern for construction. I know this is having two towers at the same time where you build a new tower and you take down the other tower is becoming very prevalent and I know of several towers where they had to be about 30 feet and we had interlaced wires. So this situation here has really been optimized and minimizes the impact, excuse me, the impact of the existing tower on the new tower. The other thing I want to point out that Radient is a reputable, top company and it has a very good safety record and experience in similar construction with this type of job and I have worked with them on previous jobs that were much more complex than what we're dealing here. The other point is that we're dealing with a short duration when these towers will be simultaneously on the tower (sic). We're talking about a year's timeline. That translates into having the probability of having an extreme event occurring during that period to be extremely low. It becomes basically very, very insignificant.

R. 15943-44.

This testimony most definitely is evidence that a multiple tower failure is an unlikely event, and that the presently proposed location of the new tower minimizes the risk. Mr. Malouf did not, however, directly address whether a failure of the new tower could cause the Channel 4 tower to topple on an occupied dwelling, or whether any other multiple tower failure scenario would endanger occupied dwellings.

The defendants' other expert, Jones, did not expressly address the multiple tower failure scenario. He did conclude that "[t]he proposed tower is setback sufficient to prevent debris from tower failure or collapse from falling onto occupied dwellings." R. 13019. Whether he took the domino-type multiple tower failure scenarios into account in reaching this conclusion cannot be determined from his report.

The Court's obligation is to apply the law as it is written. The zoning resolution states in plain English that "Where more than one tower is located on a site, the set back between such towers shall be sufficient to prevent multiple failures in the event one tower fails." The Court interprets this sentence, in the context of the entirety of §15.F.2.b.(2) of the zoning resolution, to apply to multiple failures that might impact occupied dwellings other than those occupied by the tower owner. The plaintiffs did not present evidence to the Board that multiple tower failure might impact an occupied dwelling. More importantly, Lake Cedar did not present evidence to the Board that expressly indicated that multiple tower failure would not have that result.

Because the Court cannot find from the record that the Board has received “competent evidence” on this point, the Court must once again remand the case to the Board for the consideration of further evidence. The remand is a limited one, and the Court does not invite either party to invent new arguments not previously addressed. If competent evidence is presented to the Board that the tower set back is sufficient to prevent multiple tower failures from impacting occupied dwellings, and the Board once again affirms the rezoning decision, then the Court will lift the stay and deny a permanent injunction. If such evidence cannot be presented, then Court will grant the injunction. I do not like having this case dragging out any longer, but the law is what it is. The Court orders that the remand proceed in an expeditious manner so that the matter can be resolved as soon as possible.

I will briefly mention one other argument made by the tower opponents. They argue that because the Board conditioned its approval on a condition that is unenforceable because of federal preemption, i.e., Lake Cedar’s providing an independent remediator to resolve complaints of interference of the new tower’s emissions with electronic equipment, the resolution must fail. The short answer is that the resolution does not in fact make this a condition of its approval. R. 13152. Lake Cedar’s proposal to fund such an individual may have been a part of what persuaded the Board ultimately to approve the resolution. *See id.* at ¶6. By its express terms, however, the resolution does not make this a condition either of its finding that the rezoning proposal satisfies §15.F.2 of the zoning resolution or its overall approval of the proposal.

To persons of interest on both sides of these issues it might seem strange that this case focuses on relatively improbable events such as multiple tower failures rather than on more fundamental health and enjoyment of life issues that are really at the heart of plaintiffs’ opposition to the tower. The reason quite simply is that the tower opponents have had their hearing on those issues in the forum that exists for that purpose, i.e., the Board of County Commissioners, and they lost in that forum. They are left to argue what they can in the courts, even if the points they are arguing now are not the points that the affected segments of the public most care about.

The case is remanded to the Board for further proceedings consistent with this order. Meanwhile, the stay remains in effect.

Dated in Golden, Colorado this 4 day of May , 2005

BY THE COURT:



R. BROOKE JACKSON
District Court Judge

CERTIFICATE OF MAILING

I hereby certify that on the 4 day of May, 2005, I caused a true and accurate copy of the above and foregoing document to following via the method indicated:

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/s/ Mary DeRosa _____
Division Clerk

EXHIBIT B

0001

JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS MEETING

September 27, 2005
IT Operations Division

The hearing was held on September 27, 2005, at the Jefferson County offices, 100 Jefferson County Parkway, Golden, CO 80419.

KATHY L. DAVIS
Certified Realtime Reporter

0002

P R O C E E D I N G S

THE CHAIRMAN: This County Commissioners hearing for September the 27th come to order. Would you all please join me in the Pledge of Allegiance.

ALL: I pledge allegiance to the flag of the United States of America. And to the Republic for which it stands, one nation, under God, indivisible, with liberty and justice for all.

(A discussion was had about the microphones working.)

THE CHAIRMAN: Next on the agenda is the approval of the minutes of the previous board hearing for September the 20th.

UNIDENTIFIED MAN: Mr. Chairman, I move approval of the minutes of the September 20th, 2005 board --

UNIDENTIFIED MAN: Second.

THE CHAIRMAN: Second?

UNIDENTIFIED WOMAN: Commissioner Auburn?

COMMISSIONER AUBURN: Yes.

UNIDENTIFIED WOMAN: Commissioner McCasky?

0003

COMMISSIONER MCCASKY: Yes.

UNIDENTIFIED WOMAN: Commissioner Congrove?

UNIDENTIFIED MAN: Yes.

THE CHAIRMAN: Okay. Next is the consent agenda. Do I have a motion?

UNIDENTIFIED MAN: Mr. Chairman, I move approval of consent agenda items 1 through 6.

UNIDENTIFIED MAN: Second.

21 Mr. Chairman. After both hearings, I'd move that
22 this board find that the tower setback is
23 sufficient to prevent multiple tower failures
24 from impacting dwellings occupied by persons
25 other than the tower owner.

0086

1 UNIDENTIFIED MAN: Second.
2 UNIDENTIFIED WOMAN: Commissioner
3 McCasky?

4 COMMISSIONER MCCASKY: Before I
5 cast my vote, I'd like to make a brief statement
6 in deference to our citizens and the sweeping
7 impact that has been discussed. And I have spent
8 an inordinate amount of time in deference to this
9 issue in reviewing the documentation, reviewing
10 the testimony, and hearing -- reading everything
11 that we've had given to us.

12 And following sort of the narrow
13 construct of Judge Jackson's opinion and
14 instructions and from my interpretation of the
15 zoning reg- -- zoning regulation, you know, I
16 have to make a determination on the regulation as
17 is written and not how I would have written it.

18 I do believe the applicant complies
19 with the regulation as it is written, and
20 therefore I vote yes.

21 UNIDENTIFIED WOMAN: Commissioner
22 Auburn?

23 COMMISSIONER AUBURN: No.

24 (Clapping.)

25 UNIDENTIFIED WOMAN: Commissioner

0087

1 Congrove?

2 COMMISSIONER CONGROVE: No.

3 (Clapping and cheering.)

4 THE CHAIRMAN: Do you have

5 anything at all? No?

6 Frank, do you have anything?

7 UNIDENTIFIED MAN: No, I don't,

8 Mr. Chairman.

9 THE CHAIRMAN: Okay. This is

10 adjourned.

11 (The hearing concluded.)
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EXHIBIT C

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway, Golden, Colorado 80401	
Plaintiffs: CITY OF GOLDEN, et al.; Defendant(s): JEFFERSON COUNTY, BOARD OF COUNTY COMMISSIONERS OF JEFFERSON COUNTY; and LAKE CEDAR GROUP, L.L.C.	▲ COURT USE ONLY ▲
Attorneys for Plaintiff City of Golden: Name: James Windholz David Williamson Windholz & Associates Address: 1650 38 th Street, Suite 103W Boulder, Colorado 80301 Telephone: (303) 443-3100 Registration: #1253, #8530 Name: John Putnam Kaplan Kirsch & Rockwell LLP Address: 1675 Broadway, Suite 2300 Denver, Colorado 80202 Telephone: (303) 825-7000 Registration: #23253 Attorneys for Individuals, Corporate Entities and Homeowners' Associations Name: Deborah Carney Carney Law Office Address: 21789 Cabrini Boulevard Golden, Colorado 80401 Telephone: (303) 526-9666 Registration: #1253, #8530 Attorneys for Defendant Lake Cedar Group, LLC Name: David W. Stark Colin C. Deihl Karen L. Brody Faegre & Benson LLP Address: 3200 Wells Fargo Center 1700 Lincoln St. Denver, Colorado 80203 Telephone: (303) 607-3500 Registration: #4899, #19737, #27215	Case Number: 03-CV-3045 Div: 6 Ctrm: 5-B

<p>Attorneys for Defendant Jefferson County</p> <p>Name: Frank Hutfless Writer Mott</p> <p>Address: Jefferson County Attorney Jefferson County Attorney's Office 100 Jefferson County Parkway, #5500 Golden, Colorado 80419</p> <p>Telephone: (303) 271-8959</p> <p>Registration: #16178, #33148</p>	
<p align="center">STIPULATED MOTION REGARDING PROCEDURE TO ADDRESS SECOND REMAND TO BOARD OF COUNTY COMMISSIONERS AND CONSOLIDATION OF RELATED CASE</p>	

The parties, through their undersigned counsel, submit this Stipulated Motion Regarding Procedure to Address Second Remand Order to Board of County Commissioners and Consolidation of Related Case. In support of this Stipulated Motion, the parties state as follows:

1. On May 4, 2005, the Court entered an order remanding this action for a second time (the "Second Remand Order") to the Jefferson County Board of County Commissioners (the "Board").

2. After receiving the remand order, the Board conducted a hearing on August 30 and September 27, 2005 (the "Second Remand Hearing").

3. At the conclusion of the hearing, Commissioner McCasky moved that the Board "find that the tower setback is sufficient to prevent multiple tower failures from impacting dwellings occupied by persons other than the tower owner." See Commissioners' Minutes of September 27, 2005, attached hereto as Exhibit A. The Board denied the motion by a two to one vote. See Exhibit A.

4. On September 28, 2005, the City of Golden filed a Notice of Decision by the Board of County Commissioners; Motion to Vacate Resolutions and Enter Permanent Injunction ("Motion to Vacate"). In its Motion to Vacate, Golden requested that the Court enter an order vacating Jefferson County Resolutions No. CC-03-041 and CC-04-451 approving Lake Cedar's rezoning application and grant a permanent injunction against any steps taken pursuant to these Resolutions.

5. Lake Cedar contends that the Plaintiffs are not entitled to the relief requested in the Motion to Vacate. At the Second Remand Hearing, the Board heard evidence on the multiple tower failure issue. Commissioner McCasky moved to find that the tower setback was sufficient, and the remaining two Commissioners voted against the motion. It is Lake Cedar's position that the Board made no affirmative finding that the setback between towers was not sufficient to prevent multiple tower failure from impacting occupied dwellings not owned by

Lake Cedar and did not reverse its prior approvals of Lake Cedar's rezoning application. As outlined in the Motion to Vacate, the City of Golden disagrees.

6. While Lake Cedar contends that the Board did not overturn the approval of its rezoning application, it argues that the nature and legal effect of the Board's denial of Commissioner McCasky's motion is unclear. If the Court were to conclude that the Board did reverse approval of Lake Cedar's rezoning application, Lake Cedar believes that it is required to assert its own claim for review under C.R.C.P. 106(a)(4) in order to preserve its right to appeal any action that the Board may have taken. Lake Cedar has this concern because the only claim presently before this Court is Plaintiffs' claim for relief under Rule 106. See Complaint filed by Plaintiffs dated September 17, 2003. Consequently, in order to preserve its right to judicial review, on October 27, 2005, contemporaneously with this Stipulated Motion, Lake Cedar is filing its own Rule 106 action to challenge any action that the Board may have taken (the "Lake Cedar Rule 106 Action"). Plaintiffs do not agree with Lake Cedar's contention, but agree that a procedure is necessary by which the Court can efficiently consider the common issues in the Motion to Vacate and the Lake Cedar 106 Action.

7. The parties agree that, at this juncture, the Court must make a final determination as to whether Plaintiffs' request for relief under Rule 106 should be granted or denied. The parties agree that the Court cannot rule on these issues until the record from the Second Remand Hearing is certified and the parties provide the Court with additional briefing regarding the Second Remand Hearing. The parties also agree that any issues in the Lake Cedar 106 Action should be resolved in conjunction with resolution of this litigation.

8. The parties have reached an agreement on a procedure to provide the Court with the information that will be required to resolve the outstanding issues in this case, to address the Lake Cedar 106 Action, and to allow this matter to proceed expeditiously. Accordingly, the parties request that the Court enter an order establishing the following procedure to bring this action to final resolution:

a. The parties jointly move that the Court order certification of the record from the Second Remand Hearing, and direct the Board to file such record with the Clerk of this Court on or before January 31, 2006, together with a certificate of authenticity. Lake Cedar shall pay for the costs of certifying the portion of the record relating to the Second Remand Hearing

b. Lake Cedar is contemporaneously filing an action under C.R.C.P. 106(a)(4) (the Lake Cedar 106 Action) seeking judicial review of the Board's denial of the Motion on or before October 27, 2005, which is thirty days from the date of the Board's action. In entering into this Stipulated Motion, Plaintiffs are not waiving any arguments they may have to challenge the procedural and jurisdictional necessity and propriety of the Lake Cedar 106 Action. Lake Cedar will not oppose any motion Plaintiffs may file to intervene in the Lake Cedar 106 Action.

c. The Court consolidates this action with the Lake Cedar 106 Action to allow joint briefing and resolution of the issues.

d. Forty days after certification of the record from the Second Remand Hearing, Lake Cedar shall file its opening brief in accordance with Rule 106(a)(4)(VII). Lake Cedar's opening brief shall address the claims asserted in the Lake Cedar 106 Action, respond to the City of Golden's Motion to Vacate and address any unresolved issues in this action.

e. Thirty days after service of Lake Cedar's Opening Brief, the Plaintiffs and Jefferson County shall file their answer briefs.

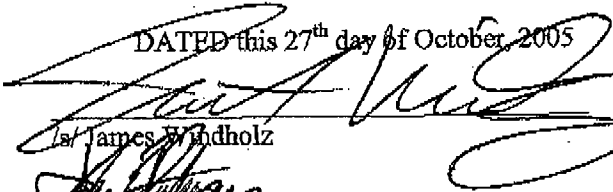
f. Fifteen days after service of the Plaintiffs' and Jefferson County's answer briefs, Lake Cedar shall file its reply brief.

g. No additional responses to Golden's pending Motion to Vacate will be required from the parties.

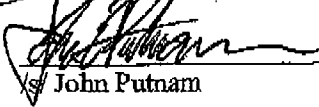
9. After submittal of the record and the parties' briefs, the Court will make a determination as to whether Plaintiffs' request for relief under Rule 106 should be granted or denied, any other unresolved issues remaining in this litigation and the issues raised in the Lake Cedar 106 Action.

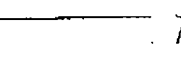
WHEREFORE, the parties request that the Court enter an order establishing the procedure set forth above to resolve the outstanding issues in this action, and for such further and different relief as the Court deems appropriate. A proposed order is attached.

DATED this 27th day of October, 2005


/s/ James Windholz


/s/ Writer Mott


/s/ John Putnam


/s/ David W. Stark


/s/ Deborah Carney

In accordance with C.R.C.P. 121 §1-26(9) a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the court upon request.

d. Forty days after certification of the record from the Second Remand Hearing, Lake Cedar shall file its opening brief in accordance with Rule 106(a)(4)(VII). Lake Cedar's opening brief shall address the claims asserted in the Lake Cedar 106 Action, respond to the City of Golden's Motion to Vacate and address any unresolved issues in this action.

e. Thirty days after service of Lake Cedar's Opening Brief, the Plaintiffs and Jefferson County shall file their answer briefs.

f. Fifteen days after service of the Plaintiffs' and Jefferson County's answer briefs, Lake Cedar shall file its reply brief.

g. No additional responses to Golden's pending Motion to Vacate will be required from the parties.

9. After submittal of the record and the parties' briefs, the Court will make a determination as to whether Plaintiffs' request for relief under Rule 106 should be granted or denied, any other unresolved issues remaining in this litigation and the issues raised in the Lake Cedar 106 Action.

WHEREFORE, the parties request that the Court enter an order establishing the procedure set forth above to resolve the outstanding issues in this action, and for such further and different relief as the Court deems appropriate. A proposed order is attached.

DATED this 27th day of October, 2005

/s/ James Windholz

/s/ Writer Mott

/s/ John Putnam

/s/ David W. Stark



/s/ Deborah Carney

In accordance with C.R.C.P. 121 §1-26(9) a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the court upon request.

d. Forty days after certification of the record from the Second Remand Hearing, Lake Cedar shall file its opening brief in accordance with Rule 106(a)(4)(VII). Lake Cedar's opening brief shall address the claims asserted in the Lake Cedar 106 Action, respond to the City of Golden's Motion to Vacate and address any unresolved issues in this action.

e. Thirty days after service of Lake Cedar's Opening Brief, the Plaintiffs and Jefferson County shall file their answer briefs.

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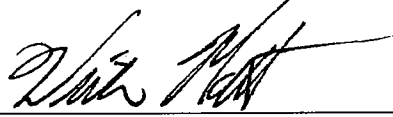
g. No additional responses to Golden's pending Motion to Vacate will be required from the parties.

9. After submittal of the record and the parties' briefs, the Court will make a determination as to whether Plaintiffs' request for relief under Rule 106 should be granted or denied, any other unresolved issues remaining in this litigation and the issues raised in the Lake Cedar 106 Action.

WHEREFORE, the parties request that the Court enter an order establishing the procedure set forth above to resolve the outstanding issues in this action, and for such further and different relief as the Court deems appropriate. A proposed order is attached.

DATED this 27th day of October, 2005

/s/ James Windholz



/s/ Writer Mott

/s/ John Putnam

/s/ David W. Stark

/s/ Deborah Carney

In accordance with C.R.C.P. 121 §1-26(9) a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the court upon request.

d. Forty days after certification of the record from the Second Remand Hearing, Lake Cedar shall file its opening brief in accordance with Rule 106(a)(4)(VII). Lake Cedar's opening brief shall address the claims asserted in the Lake Cedar 106 Action, respond to the City of Golden's Motion to Vacate and address any unresolved issues in this action.

e. Thirty days after service of Lake Cedar's Opening Brief, the Plaintiffs and Jefferson County shall file their answer briefs.

f. Fifteen days after service of the Plaintiffs' and Jefferson County's answer briefs, Lake Cedar shall file its reply brief.

g. No additional responses to Golden's pending Motion to Vacate will be required from the parties.

9. After submittal of the record and the parties' briefs, the Court will make a determination as to whether Plaintiffs' request for relief under Rule 106 should be granted or denied, any other unresolved issues remaining in this litigation and the issues raised in the Lake Cedar 106 Action.

WHEREFORE, the parties request that the Court enter an order establishing the procedure set forth above to resolve the outstanding issues in this action, and for such further and different relief as the Court deems appropriate. A proposed order is attached.

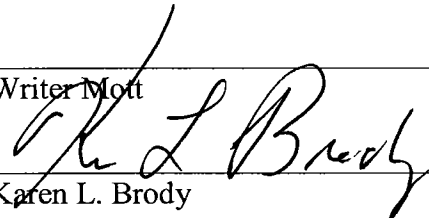
DATED this 27th day of October, 2005

/s/ James Windholz

/s/ Writer Mott

/s/ John Putnam

/s/ Karen L. Brody

A handwritten signature in black ink, appearing to read 'K L Brody', is written over a horizontal line. The signature is fluid and cursive.

/s/ Deborah Carney

In accordance with C.R.C.P. 121 §1-26(9) a printed copy of this document with original signatures is being maintained by the law firm of Faegre & Benson LLP and will be made available for inspection by other parties or the court upon request.

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of October 2005, a true and correct copy of the foregoing **STIPULATED MOTION REGARDING PROCEDURE TO ADDRESS SECOND REMAND TO BOARD OF COUNTY COMMISSIONERS AND CONSOLIDATION OF RELATED CASE** was served on the following via the LexisNexis electronic filing system:

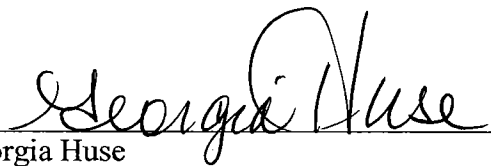
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Jefferson County Attorney's Office
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David W. Stark
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Denver, Colorado 80203



/s/ Georgia Huse

DNVR1:60321704.01

COMMISSIONERS' MINUTES OF SEPTEMBER 27, 2005

The Board of County Commissioners of the County of Jefferson, State of Colorado, met in regular session on September 27, 2005 in the Jefferson County Government Center, Golden, Colorado. Commissioner Jim Congrove, Chairman presided. Commissioner J. Kevin McCasky, Commissioner Dave Auburn and Teri Schmaedecke, Deputy Clerk to the Board, were present.

Commissioner Congrove, Chairman called the meeting to order.

STAFF PRESENT:

Nanette Neelan, Acting County Administrator
Frank Hutfless, County Attorney
Kristen Schledorn, Assistant County Attorney
Steve Brown, Planner

APPROVAL OF MINUTES

Following a general discussion, the Board upon motion of Commissioner Auburn, duly seconded by Commissioner McCasky and by unanimous vote, approved the Minutes of September 20, 2005.

CONSENT AGENDA

The Board passed the following resolutions and consent agenda items subject to the adopted conditions of approval:

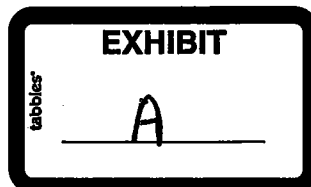
RESOLUTION CC05-422 Re: Support Services - Accounting - Expenditure Approval Listings

RESOLUTION CC05-423 Re: Board of Equalization - Board of Equalization Recommendations

RESOLUTION CC05-424 Re: Resolution Concurring with the Phasing and Funding of the I-70/32nd Avenue Interchange System Level Feasibility Study

RESOLUTION CC05-425 Re: Human Services - Memorandum of Understanding - Colorado Works and Child Care Assistance Program for 2005/2006

RESOLUTION CC05-426 Re: Board of County Commissioners - Appointment to the Tri-County Workforce Board



September 27, 2005

Page 2

#05-150635RZ **Rezoning - to be continued to October 4, 2005**
Owner: WKR PARTNERSHIP, LLC
Location: 15555 and 15565 West 52nd Avenue (Section 13, Township 3
 South, Range 70 West)
Map No.: 75
From: Agricultural-Two
To: Planned Development
Purpose: To allow up to eleven single-family residential units.
Approximate Area: 6.26 Acres
Case Manager: Susanna Sotelo

REGULAR AGENDA

The Board passed the following resolutions:

RESOLUTION CC05-427 Re: County Administrator - Personal Property Tax
 Incentive - Ball Corporation

Testimony: Preston Gibson, President of Jefferson Economic Council

PUBLIC HEARINGS

REGULAR AGENDA

#02-111694RZ Rezoning
Owner: LAKE CEDAR GROUP, LLC
Location: 21119 Cedar Lake Road (Section 4, Township 4 South, Range 70
 West)
Map No.: 107
Purpose: Second hearing to discuss testimony regarding the possibility of
 multiple tower failure and subsequent possibility of harm to nearby
 occupied dwellings, based on remand order from District Court.
Approximate Area: 81.51 Acres
Case Manager: Steve Brown
Continued From: 08/30/05

Sworn Testimony: Deb Carney, Representing C.A.R.E.
 John Putnam, Representing the City of Golden
 Marv Rockford, Representing Lake Cedar Group
 Mark Malouf, Representing Lake Cedar Group
 David Stark, Representing Lake Cedar Group

September 27, 2005

Page 3

Following the taking of sworn testimony and a general discussion, a transcript of the motion is as follows:

CONGROVE: Commissioner McCasky.
MCCASKY: Thank you Mr. Chairman. After both hearings, I move that this Board find that the tower set back is sufficient to prevent multiple tower failures from impacting dwellings occupied by persons other than the tower owner.
AUBURN: Second.
CLERK: Commissioner McCasky?
MCCASKY: Before I cast my vote, I would like to make a brief statement in deference to our citizens and the sweeping impact that has been discussed. And I have spent an inordinate amount of time in deference to this issue and reviewing the documentation, reviewing the testimony and hearing, reading everything that we have had given to us. And following sort of the narrow construct of Judge Jackson's opinion and instructions and from my interpretation on the Zoning Regulation, you know I have to make a determination of the regulation as written and not how I would have written it. I do believe that the applicant complies with the regulation as it is written and therefore I vote yes.
CLERK: Commissioner Auburn?
AUBURN: No.
CLERK: Commissioner Congrove?
CONGROVE: No.

COUNTY ADMINISTRATOR

The following contracts were approved by the Elected Officials, County Administrator and/or Director of Human Services as directed by the Board of County Commissioners delegation policy or were previously approved by a Board of County Commissioners Resolution and are published in accordance with requirements for publication. (No further action by the Board of County Commissioners is required):

Contract - Aviation Systems Maintenance, Inc. for AWOS Maintenance (\$4,800) - Airport (CA05-075)

Contract - Reidy Metal Services, Inc. for Maintenance, repair, and refinishing architectural metals in the Administration and Courts Building (\$16,188) - Property Management (CA05-076)

Agreement - Vickie Kearney for Individual, Couples, Group and Family Therapy (\$10,000) - Children, Youth & Families (HS05-071)

September 27, 2005
Page 4

Agreement - Tamara McFarland, LPN for Health Nursing Services (\$45,000) - Children, Youth & Families (HS05-072)

Agreement - Corporate Development Group, Inc. for Consulting Services (\$18,120) - Children, Youth & Families (HS05-073)

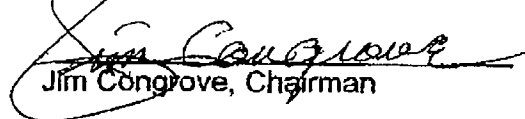
ADJOURNMENT

There being no further business to come before the Board, the meeting was adjourned.

Attest:


Teri Schmaedecke, Deputy Clerk

Board of County Commissioners of
the County of Jefferson, Colorado


Jim Congrove, Chairman